BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-181-C - ORDER NO. 2002-619 √ JE

AUGUST 30, 2002

IN RE:	Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.	)))	ORDER ON ARBITRATION

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition of US LEC of South Carolina Inc. ("US LEC") for arbitration to establish an interconnection agreement with Verizon South Inc. ("Verizon South"), pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "1996 Act"). In its petition for arbitration, US LEC initially raised nine issues. A Hearing on the issues raised in US LEC's Petition was scheduled for August 12, 2002. On or about August 5, 2002, the Commission was advised by the parties that, through negotiations that had continued after the Petition had been filed, they had resolved three of the nine issues initially presented for arbitration. The remaining issues address different aspects of their interconnection arrangements.

US LEC made a bona fide request for interconnection, services or network elements pursuant to section 252(a) of the 1996 Act on or about December 15, 2001. Pursuant to Section 252(b)(1), US LEC could bring a petition for arbitration of outstanding issues during the period from the 135th day to the 160th day after December

15, 2001. The Commission has 9 months, or until September 16, 2002, to resolve the matters raised in the petition. *See*, 252(b)(4)(C) of the 1996 Act.

US LEC filed its Petition on or about May 24, 2002. Verizon filed its Response on June 18, 2002. Upon the filing of the Petition and Response, the Commission established a schedule and procedures for arbitration. See Commission Order No. 2002-483 dated June 25, 2002 as modified by the Commission in Order No. 2002-557, dated July 31, 2002. The parties in this matter filed testimony setting forth the outstanding issues to be arbitrated by the Commission.

In light of the parties' settlement of three of the initial nine issues, the parties agreed to submit the remaining issues to the Commission for consideration and resolution based on the pre-filed testimony and subsequent briefs. In that regard, US LEC presented the pre-filed direct and rebuttal testimony of Ms. Wanda G. Montano, Vice President, Regulatory and Industry Affairs for US LEC Corp., the parent company of US LEC of South Carolina Inc. and the pre-filed direct and rebuttal testimony of Mr. Frank R. Hoffmann, Jr., Senior Interconnection Manager for US LEC Corp., the parent company of US LEC of South Carolina Inc. Verizon South presented the pre-filed direct and surrebuttal testimony of Mr. Peter J. D'Amico, a Senior Product Manager in the Interconnection Product Management Group for Verizon Services Corporation and the pre-filed direct and surrebuttal testimony of Mr. Terry Haynes, a manager in the State Regulatory Policy and Planning Group for Verizon.

II. LEGAL STANDARDS AND PROCESSES FOR ARBITRATION UNDER THE 1996 ACT

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.[1] After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.[2] The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.[3] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties."[4] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.[5] The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and the response.[6]

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, those sections then form the basis for arbitration. Once the Commission provides guidance on

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1 47 U.S.C. § 251(c)(1).
2 47 U.S.C. § 251(b)(2).
3 *See generally,* 47 U.S.C. §§ 252(b)(2)(A) and 252(b)(4).
4 47 U.S.C. § 252(b)(2).
5 47 U.S.C. § 252(b)(3).
6 47 U.S.C. § 252(b)(4).

the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval.[7]

The purpose of this arbitration proceeding is the resolution by the Commission of the remaining disputed issues set forth in the Petition and Response.[8] Under the 1996 Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission ("FCC") regulations pursuant to Section 252; shall establish rates according to the provisions of Section 252(d) for interconnection, services, and network elements; and shall provide a schedule for implementation of the terms and conditions by the parties to the Agreement.[9]

III. FINDINGS OF FACT

1. US LEC is a corporation organized and formed under the laws of the State of Delaware. US LEC is authorized by this Commission to provide local exchange service in South Carolina. US LEC was granted authority to provide facilities-based and resold local exchange and interexchange services in the State of South Carolina by this Commission on November 10, 1997, in Docket No. 97-300-C, Order No. 97-957. US LEC is, and at all relevant times has been, a "local exchange carrier" ("LEC") under the 1996 Act.

2. Verizon South is a corporation organized and formed under the laws of the State of Delaware, having an office at 1301 Gervais Street, Suite 825, Columbia, South Carolina 29201. Verizon South is authorized by this Commission to provide local

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[7] 47 U.S.C. § 252(e).
[8] 47 U.S.C. § 252 (b)(4)(c).
[9] 47 U.S.C. § 252(c).

exchange and other services within its franchised areas in South Carolina. Verizon South is, and at all relevant times has been, an "incumbent local exchange carrier" ("ILEC") under the terms of the 1996 Act.

3. US LEC has one switch located in Charleston, South Carolina. US LEC commenced facilities-based operations in May, 2002.

4. US LEC and Verizon began negotiations of an interconnection agreement but were unable to finalize all of the terms. Thus, this Commission was called upon to arbitrate the final unresolved terms of the interconnection agreement.

IV. CONCLUSIONS OF LAW

A. GENERAL

This arbitration is being conducted pursuant to Section 252 of the Act. Pursuant to Section 252(b)(4)(A), we limit our consideration to the remaining issues set forth in the Petition and the Response.

The appropriate legal standard to be applied in this case is stated in Sections 252(c) and 252(d)(2) of the 1996 Act, as follows:

> (c) Standards for Arbitration.--In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—
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> (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251;
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> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and

> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.
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> (d)(2) . . . a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless –
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> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
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> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

B. UNRESOLVED ISSUES

The remaining unresolved issues to be resolved by this Commission are identified as follows:

Issues 3 and 4 deal with whether the parties are obligated to pay each other reciprocal compensation for terminating calls to Voice Information Service Providers and whether US LEC can be required to construct a dedicated trunk for delivering Voice Information Services Traffic to providers served by Verizon South.

Issue 5 concerns whether the parties will continue to use the traditional "originating party"—"terminating party" nomenclature in widespread use throughout the industry in connection with the exchange of traffic or whether Verizon South can introduce the entirely new term of a "receiving party" instead of a terminating party.

Issue 6 asks whether, in calculating their reciprocal compensation obligations, the parties will continue to utilize the NPA/NXX of the calling and called numbers as the factors determining whether a call is local or toll or whether they will be required to change that historical system and, instead, determine their obligations based on the physical end-points of the originating and terminating callers.

Issue 7 addresses the compensation framework that will govern the parties' reciprocal compensation obligations for terminating calls to Internet service providers ("ISPs") in the event the compensation framework in the FCC's Internet Order is vacated or reversed on appeal.

Finally, Issue 8 deals with whether Verizon South should be permitted to change its non-tariffed charges during the term of the agreement, *i.e.*, those fixed by the parties during their negotiations of the interconnection agreement, or must such charges remain fixed for the entire term.

These items are discussed separately below.

1. ISSUE 3 – Is US LEC entitled to reciprocal compensation for terminating "Voice Information Services" traffic? (Glossary, Section 2.75; Additional Services Attachment, Section 5.1; Interconnection Attachment, Section 7.3.7).

US LEC's Position: Yes. The traffic that Verizon South now seeks to define as Voice Information Services Traffic fits completely the definition of Reciprocal Compensation Traffic that is eligible for reciprocal compensation.

Verizon South's Position: No. "Voice Information Services" traffic is defined to include only traffic that is not subject to reciprocal compensation under current law.

Discussion:

At issue is whether US LEC—and Verizon South, for that matter—is entitled to be paid reciprocal compensation for terminating "Voice Information Services" traffic. As stated in US LEC's Petition, and in the testimony of Ms. Wanda Montano, Verizon South seeks to define an entire category of traffic that it urges the Commission to exclude from the parties' reciprocal compensation obligations. (Direct Prefiled Testimony of Ms. Wanda G. Montano (hereafter, "Montano Direct") at 11). Verizon South first defines "Voice Information Services Traffic" as a class of traffic that "provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public." (Verizon South Template, Additional Services Attachment, Section 5.1). Verizon South then asks the Commission to exclude the defined class of traffic from its reciprocal compensation obligations.

The Commission finds that Verizon South's request lacks a sound basis in law or fact. We decline Verizon South's request and rule in favor of US LEC's position. We reject Verizon South's proposal because the categories of traffic that Verizon South defines as Voice Information Services Traffic fit completely within the definition of "Reciprocal Compensation Traffic" that is the basis for the parties' reciprocal compensation obligations. (Montano Direct at 12)

FCC rules define "Reciprocal Compensation" as an arrangement "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."[10] Similarly, "Reciprocal Compensation Traffic" is defined as "[t]elecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is inter-

[10] FCC Rule 51.701(e). The FCC defines "telecommunications traffic" as "Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." FCC Rule 51.701(b)(1).

state or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."[11]

The categories of traffic included in the definition of "Voice Information Services Traffic" fit this definition of "Reciprocal Compensation Traffic." Whether the call is a [i] "recorded voice announcement information or [ii] a vocal discussion program open to the public," it is originated by a customer of one party on that party's network and is terminated by a customer of the other party on that party's network. (*Id.*) Further, that type of call cannot be characterized as interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.

"Exchange Access" is defined in the Telecommunications Act as "the offering of access to telephone exchange services or facilities *for the purpose of the origination or termination of telephone toll services*." 47 U.S.C. § 153 (16) (emphasis added). The term has this same meaning for purposes of the parties' exchange of traffic in South Carolina because they have defined it in their proposed Interconnection Agreement as having "the meaning set forth in the [1996] Act." (Glossary at § 2.33).

"Information Access" is not defined in the 1996 Act; rather, it is defined in the Modified Final Judgment as "the provision of specialized exchange telecommunications services *by a BOC* in an exchange area in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."[12]

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[11] Glossary, Section 2.75.

[12] *United States v. AT&T*, 552 F. Supp. 131, 229 (D. D.C. 1982)(emphasis added).

In turn, "Information Services" is defined in the 1996 Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." (47 U.S.C. § 153(20)).

US LEC properly interprets these definitions to exclude calls to Voice Information Service Providers, especially those providers who offer a service that offers "a vocal discussion program open to the public." That traffic does not fit the definition of "Information Service," and it typically involves a call that originates and terminates in the same local calling area. Indeed, the New York Public Service Commission addressed the issue and concluded that calls to so-called "chatlines" were eligible for reciprocal compensation.[13]

We similarly find that, to the extent that US LEC provides service to a Voice Information Service Provider who offers "recorded voice announcement information," that service does not constitute "Information Access" because, by its terms, information access is defined as a service provided "by a BOC". The term does not apply when the service is provided by a competitive local exchange provider. We have not found any decision by the FCC or any state commission which holds that a call to a recorded voice announcement is not eligible for reciprocal compensation.

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[13] *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation,* Docket No. 99-C-0529, *Opinion and Order Concerning Reciprocal Compensation*, Order No. 99-10 (N.Y.P.S.C., rel. Aug. 26, 1999).

The FCC Wireline Competition Bureau ("Wireline Bureau") recently addressed this issue, albeit in a more generalized fashion.[14] Verizon South alleges here that Voice Information Services Traffic is excluded from the parties' reciprocal compensation obligations because it is traffic that falls within the scope of Section 251(g) of the Act, and pursuant to the FCC's *ISP Remand Order*[15], all 251(g) traffic is excluded from reciprocal compensation.[16] In its arbitration before the Wireline Bureau, Verizon sought to define its reciprocal compensation obligations in exactly the same way that it does here—as excluding "interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."[17] Verizon argued that all 251(g) traffic fell within those defined areas of traffic and, therefore, should be excluded automatically from its reciprocal compensation obligations.[18] The Wireline Bureau rejected Verizon's argument, stating: "[w]e disagree with Verizon's assertion that every form of traffic listed in Section 251(g) should be excluded from Section

[14] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Pre-emption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, ¶¶ 39, 51-54 (Wireline Comp. Bureau, rel. July 17, 2002) ("*FCC Arbitration Order*").

[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ("*ISP Remand Order*"), *rev'd*, *WorldCom v. FCC,* 01-1218 (D.C. Cir., May 3, 2002).

[16] *Response of Verizon South Inc. to Petition For Arbitration Filed By US LEC of South Carolina Inc.* at pp. 17-18.

[17] *Compare*, *FCC Arbitration Order* at ¶ 257, *quoting*, Verizon's Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1., *with*, Verizon South's Proposed Agreement to US LEC, Interconnection Attach., § 7.3.1.

[18] *FCC Arbitration Order* at ¶ 257.

251(b)(5) reciprocal compensation."[19] In essence, the Wireline Bureau concluded that Verizon was relying entirely on the 251(g) arguments that had been rejected by the D.C. Circuit and "decline[d] to adopt Verizon's contract proposals that appear to build on the logic that the court has now rejected."[20]

We conclude that the same reasoning applies with equal force here: to the extent that Verizon South's argument against reciprocal compensation for Voice Information Services Traffic is predicated entirely on a faulty reading of the interplay between sections 251(b)(5) and 251(g), we reject it.[21] In short, the Commission finds that there is no legal or factual basis to exclude what Verizon South has defined as "Voice Information Services Traffic" and, as such, the parties shall be required to compensate each other for exchanging and terminating such traffic in accordance with US LEC's position on this issue.

2. ISSUE 4 – Should US LEC be required to provide dedicated trunking at its own expense for Voice Information Service traffic that originates on its network for delivery to Voice Information Service providers served by Verizon South? (Additional Services Attachment, Section 5.3).

US LEC's Position: No.

Verizon South's Position: Yes.

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[19] *Id.* at ¶ 261.

[20] *Id.*

[21] The Wireline Bureau did not reach the ultimate question of whether reciprocal compensation would be owed on calls to such information service providers as, for example, time and temperature recordings on the grounds that the parties agreed such services did not exist in Virginia and were not likely to be offered. (*FCC Arbitration Order* at ¶ 314.)

Discussion:

Closely related to Issue 3 is the question raised in Issue 4 of whether US LEC should be required to provide dedicated trunking, at its own expense, for Voice Information Service traffic that originates on US LEC's network for delivery to Voice Information Service providers served by Verizon South.

The Commission concludes that Verizon South has stated no reasonable basis for its position that, if US LEC's customers seek to call Voice Information Services connected to Verizon South's network, then US LEC must provide, at its own expense, a separate, dedicated trunk to carry that traffic. At the outset, we note Verizon South's concession that this situation is unlikely to arise in South Carolina because it does not provide (and does not plan to provide) the services for which it seeks to impose a separate trunking requirement on US LEC (Verizon South Response at 19). Verizon South's contention that it must nevertheless insist on separate trunking language because the issue may arise in other states where portions of interconnection agreements are subject to "'cross-border opt-in'" (Verizon South Response at 20) is simply an insufficient basis for this Commission adopt Verizon South's proposed resolution in light of the fact that the purported factual predicate for the proposed requirement is so remote here in South Carolina. Further, Verizon South's contention is further weakened because its Brief to the Commission, Verizon South states that it "cannot agree to delete the requirement for separate trunking – even though such trunking is unlikely to be required in South Carolina – lest carriers in other states claim that such an accommodation must be made available in each state where Verizon does provide those services." Brief at 8 (emphasis added). As this Commission is finding that Verizon South may not require US LEC to install dedicated trunking in these instances, Verizon South is not "agreeing" to delete this requirement but is in fact "ordered" by the Commission to delete this requirement.

Furthermore, we find that Verizon South's proposal would impose significant costs on US LEC, when Verizon South has not made any showing, first, that such a dedicated facility even is necessary or, second, that the amount of traffic generated by US LEC's customers and destined for Voice Information Services connected to Verizon South's network is sufficiently large as to warrant a separate trunk. (Montano Direct at 14-15).

Verizon South similarly has failed to demonstrate that its proposal is warranted because of an inability to address its billing concerns on its own network (Montano Direct at 15). We note that Verizon South presented no testimony on this issue even though it is the proponent of the separate trunking requirement that is opposed by US LEC. In its Brief to the Commission, Verizon South states that separate trunking of pay-per-call services is essential to permit Verizon South to control access to those services. Further, Verizon South submits that separate trunking is necessary to ensure that it does not bill reciprocal compensation for such traffic. We find that Verizon South's stated reasons are without merit, particularly in light of the fact that this Commission has found, in Issue 3 above, that reciprocal compensation is appropriate for calls to Voice Information Service Providers. We therefore find that Verizon South's proposal is unjustified, and the Commission rules in US LEC's favor on this issue and rejects Verizon South's proposed language.

3. ISSUE 5 – Should the term "terminating party" or the term "receiving party" be employed for purposes of traffic measurement and billing over interconnection trunks? (Glossary, Section 2.56; Interconnection Attachment, Sections 2.1.2, 8.5.2, and 8.5.3).

US LEC's Position: The term "terminating party" should be utilized, consistent with the plain language of Section 251(b)(5) and other sections of the agreement.

Verizon South's Position: The term "receiving party" is more accurate and should be used.

Discussion:

Verizon South seeks use of the term "receiving party" rather than "terminating party" in the interconnection agreement to indicate the carrier that terminates a call for purposes of traffic measurement and billing over interconnection trunks. According to Verizon South, the traffic that competing local exchange companies exchange with one another includes both conventional local traffic and traffic bound for enhanced service providers, including ISPs. While both parties agree that the receiving carrier terminates conventional local voice traffic, Verizon South does not agree that the receiving carrier terminates traffic delivered to ISPs and other enhanced service providers. Verizon South bases its position on the FCC's position that local carriers do not terminate such traffic; rather, such traffic is delivered to enhanced service providers, including ISPs, for onward transmission.

This Commission recognizes that throughout the industry, traffic has been referred to as either originating or terminating. Thus, in any call, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier.[22] Even in the proposed interconnection agreement, this tradition is, for the most part, continued. Thus, in section 7.2 of the interconnection agreement, the parties agree that they will compensate each other for the "transport and termination" of Reciprocal Compensation Traffic.[23] In turn, "Reciprocal Compensation" is defined with respect to the "transport and termination" of "Reciprocal Compensation Traffic", which, itself, is defined with reference to traffic that is "terminated on the other Party's Network." [24]

Against this long-standing, historical backdrop, Verizon South proposes to interject the new term of a "receiving party" which Verizon South asserts is a more accurate term than "terminating party." Thus, in various sections of the Interconnection Attachment dealing with the delivery, measurement and billing of traffic, Verizon South no longer refers to the delivery or measurement of traffic from the "originating party" to the "terminating party"; rather, Verizon South refers to traffic delivered from the "originating party" to the "receiving party". Verizon South does not define the term "receiving party".

The FCC has twice ruled that calls to ISPs are exempt from carriers' Section 251(b)(5) compensation obligations by stating that calls to ISPs do not terminate there. In both instances, the D.C. Circuit has remanded the FCC's decisions. While the FCC's decision is still valid in that the D.C. Circuit has not reversed the FCC's decision, US LEC asserts that there remains a distinct possibility that the FCC could conclude that, in fact, for purposes of reciprocal compensation, calls to ISPs *do* terminate at the ISP. US

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[22] Montano Direct at 15.

[23] *Id.*

[24] *Id.*

LEC argues that in the event that the FCC changes its ruling or a court overturns the FCC's ruling, then if US LEC has agreed that calls to ISPs are "received" by US LEC but not "terminated" by US LEC, that Verizon South will assert that US LEC is not entitled to receive reciprocal compensation for terminating calls to ISPs.[25]

Upon consideration of the parties positions on this issue, we direct the parties to continue to use the term "terminating party" for billing, measurement and compensation purposes throughout the agreement. As such, we reject Verizon South's proposition to include the new term of a "receiving party" in lieu of the term "terminating party" when referring to the carrier that terminates a call for purposes of traffic measurement and billing over interconnection trunks. This Commission can find no compelling reason in Verizon South's position why its attempt to modify decades of industry practice should be accepted. Furthermore, Verizon South has not cited any authority indicating that its new interpretation has been ordered for use in an interconnection agreement by any regulatory body or tribunal. Like the FCC, this Commission has also ruled that ISP-bound traffic does not terminate at the ISP's server but continues to the ultimate Internet destination. However, this Commission is also aware, as noted by US LEC, that the FCC's determination is under review. This Commission agrees with US LEC's position that should the FCC's decision either be changed or reversed on appeal that it is more appropriate for the language in the interconnection agreement to contain terms of normal usage rather than new terms which are not used in the industry and which could give rise to further interpretation and potential litigation. As the situation presently stands, for

[25] Montano Direct at 16-17.

purposes of traffic bound to enhanced service providers and ISPs, an exception to the reciprocal compensation rules applies. It is better to leave the exception in place, rather than to redefine the exception by introducing new or novel terms and concepts. Therefore, we find that Verizon South's proposal is without precedent and lacks merit, and as such we adopt US LEC's recommendation and direct the parties to continue to employ the phrase "terminating party" in their interconnection agreement.

4. ISSUE 6 – (A) Should the parties be obligated to compensate each other for calls to numbers with NXX codes associated with the same local calling area? (Glossary, Section 2.56; Interconnection Attachment, Section 7.2).

US LEC's Position: The determination of whether a call is rated as local or toll for billing purposes is based upon the NXX of the originating and terminating numbers. This practice must be maintained such that calls between an originating and terminating NXX, associated with the same local calling area, should continue to be rated as local. Under any scenario, Verizon South is responsible to bring traffic originated on its network to the US LEC-IP. The associated cost to Verizon South does not change based upon the location of US LEC's customers.

Verizon South's Position: Reciprocal compensation does not apply to interexchange traffic, defined by reference to the actual originating and terminating points of the complete end-to-end communications.

(B) Should Verizon South be able to charge originating access to US LEC on calls going to a particular NXX code if the customer assigned the NXX is located outside of the local calling area associated with that NXX code?

US LEC's Position: Verizon South should not be allowed to charge US LEC originating access for calls to an NXX code if the customers assigned that NXX is located outside of the local calling area to which that NXX is assigned.

Verizon South's Position: Intrastate and interstate access charges are governed by the parties' tariffs.

Issue No. 6 addresses two key aspects of the way the parties will compensate each other for exchanging Foreign Exchange, or FX, traffic. The first aspect is whether the parties should be obligated to pay each other reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area. US LEC contends that this practice has been the industry standard for decades and the parties should continue to base the rating, routing and inter-carrier compensation mechanisms on the NPA/NXX's of the calling and called parties. Verizon South, on the other hand, disagrees and argues that the parties' reciprocal compensation obligations should be determined by the actual beginning and end-points of the call at issue.

The second aspect of Issue 6 asks whether the parties should be able to charge originating access to each other on calls originating on their networks for termination to a customer with a particular NXX code if the customer assigned the NXX is physically located outside of the local calling area associated with that NXX code. US LEC's position is that if the Commission concludes that the parties should continue to base their inter-carrier compensation obligations on the NPA/NXX of the calling and called parties, then the physical location of those parties is irrelevant. Verizon South's position is that the parties' tariffs govern the result and that if the actual, physical location of the called party is outside of the local calling area to which the called party's NPA/NXX is assigned then, regardless of how the call is rated and routed, the call is an intraLATA toll call and originating access charges are due to the carrier serving the originating party.

In considering these issues, the Commission recognizes and acknowledges that in a prior arbitration we concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties.[26]

[26] *See, e.g., Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b)*

We find that US LEC presents no compelling reason for this Commission to reverse that prior decision.

In inviting this Commission to revisit its earlier decision on this issue, US LEC proposes that intercarrier compensation should apply to all calls that are "local" to the calling party, regardless of the physical location of the ultimate called party and that Verizon South should be prohibited from billing US LEC access charges for that traffic.[27] US LEC contends that its position is consistent with historical practice in the industry of rating a call as local or toll by referring to and comparing the NXX's of the calling and called parties and that its position also is consistent with the parties' practice of billing and paying each other reciprocal compensation for calls to their respective FX customers. US LEC also suggests that compensation for this traffic as local more accurately reflects the costs incurred by both parties, arguing that the costs Verizon South incurs to transport a call destined for a US LEC customer do not vary with the actual location of the called customer.[28] US LEC further contends that its proposal regarding intercarrier compensation for calls to customers who use these "FX" arrangements, among other things, will benefit those businesses, including ISPs, who find it desirable to obtain local numbers in several communities, while maintaining a limited number of physical locations, in order to reach and to serve a broader base of customers. Indeed, US LEC claims that one benefit of this type of service is that it provides wider, more reasonably priced access to

of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Docket No. 2000-516-C, Order on Arbitration, Order No. 2001-045 (Jan. 16, 2001).

[27] Montano Direct at 18.

[28] Montano Direct at 25.

the Internet through the use of local telephone numbers, especially in rural and sparsely populated areas of the state. Finally, US LEC argues that there is no practical, cost-effective, accurate way for the parties to segregate FX traffic from other locally dialed traffic.

Verizon South, on the other hand, asserts that the physical end-points of a call should determine whether it is local or toll, not whether the NXXs are associated with the same local calling area. Under Verizon South's position, the parties should be obligated to pay reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area, only when the call actually terminates to the other party's end users physically located in the same local calling area. Verizon South argues that when the called party's physical location is not in the same rate center as the calling party then the communication is an intraLATA toll call and should be subject to access charges.

This issue centers on the treatment of a particular type of traffic, similar to traditional foreign exchange ("FX") service, but more broadly referred to as "virtual NXX" because it encompasses more flexible service alternatives that do not use FX network configurations. This service allows a customer (typically a business) to obtain a telephone number in a local calling area in which it is not physically located.[29] As far as the person calling that number is concerned, the caller is making a "local" call to a telephone number in the caller's local dialing area, but the party answering the call is actually located somewhere else. A business customer may wish to establish such a "virtual" presence in the second local calling area so that calls to the business customer

[29] Montano Direct at 21.

from the businesses' own customers within the second local calling area are viewed as local calls by the businesses' own customers.[30]

This Commission has already addressed this issue in a prior arbitration and that decision supports Verizon's position in that this Commission held that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated."[31] The Commission squarely held that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates. In rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "[w]hile the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local service area as the originating point of the call."[32]

The Commission finds that its prior resolution of this issue is correct. The FCC's rules have always made clear that reciprocal compensation under 47 U.S.C. § 251(b)(5) "do[es] not apply to the transport and termination of interstate or intrastate interexchange traffic." *Local Competition Order*, 11 FCC Rcd at 16013, ¶ 1034.[33] The FCC confirmed that result in its April, 2001, *ISP Remand Order*, in which it held that reciprocal compensation does not apply to "interstate or intrastate exchange access, information

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[30] *Id.* at 21-23.

[31] *See Adelphia Order* at 7.

[32] *Id.* at 8.

[33] This portion of the *Local Competition Order* has never been challenged and remains binding federal law.

access or exchange services for such access." 47 C.F.R. § 51.701(b)(1). The FCC has made clear that this exclusion covers all interexchange communications: whenever a LEC provides service "in order to connect calls *that travel to points – both interstate and intrastate – beyond the local exchange*," it is providing an access service. *ISP Remand Order,* 16 FCC Rcd at 9168, ¶ 37 (emphasis added). "Congress excluded all such access traffic from the purview of section 251(b)(5)." *Id.*

It is undisputed that the calls at issue here "travel to points . . . beyond the local exchange." *Id.*; *see* Haynes Direct Testimony at 10. Accordingly, such traffic simply is not subject to reciprocal compensation under federal law, as this Commission has recognized. As described above, the Commission has already approved the result provided for by Verizon's proposed language on this issue and has squarely rejected the result proposed by US LEC. Indeed, the weight of other state commission authority is in agreement with this analysis, holding that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area. These additional state commissions include those in Ohio,[34] Florida,[35] Connecticut,[36] Illinois,[37] Texas,[38] Tennessee,[39] Georgia,[40] and Missouri.[41] The

[34] *See* Arbitration Award, *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint, and Ameritech Ohio*, Case Nos. 01-2811-TP-ARB, *et al.*, at 8, 11 (Ohio PUC May 9, 2002) ("*Ohio Arbitration Order*"), *reh'g denied*, Entry on Rehearing, Case Nos. 01-2811-TP-ARB, *et al.* (Ohio PUC July 18, 2002).
[35] *See* Staff Memorandum, *Investigation into Appropriate Methods to Compensate Carriers for Exchange Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Issue 15, at 69, 72, 96-97 (Fla. PSC Nov. 21, 2001), approved at Florida PSC Agenda Conference (Dec. 5, 2001).
[36] Decision, *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried over Foreign Exchange Service Facilities*, Docket No. 01-01-29, at 44 (Conn.

Commission is also cognizant that some state commissions, as well as the FCC Wireline Bureau, have decided this "virtual NXX" issue differently that we have. However, we are not aware of any court ruling on this issue.

"Virtual FX" traffic – that is, traffic sent to a "Virtual NXX" – is, by definition, interexchange traffic. *See* Haynes Direct Testimony at 10. A "Virtual NXX" is an exchange code assigned to end users physically located in exchanges other than the one

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Dep't Pub. Util. Control Jan. 30, 2002) ("The purpose of mutual compensation is to compensate the carrier for the cost of terminating a local call" *and "since these calls are not local*, they will not be eligible for mutual compensation.") (emphasis added)

[37] Arbitration Decision, *TDS Metrocom, Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 01-0338, at 48 (Ill. Commerce Comm'n Aug. 8, 2001); Arbitration Decision, *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332, at 9 (Ill. Commerce Comm'n Aug. 30, 2000) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.").

[38] Revised Arbitration Award, *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982, at 18 (Tex. PUC Aug. 31, 2000) (finding FX-type traffic "not eligible for reciprocal compensation" to the extent it does not terminate within a mandatory local calling scope).

[39] Interim Order of Arbitration Award, *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, at 42-44 (Tenn. Regulatory Auth. June 25, 2001).

[40] Final Order, *Generic Proceeding of Point of Interconnection and Virtual FX Issues*, Docket No. 13542-U, at 10-12 (Ga. PSC July 23, 2001) ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.").

[41] Arbitration Order, *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, at 44 (Mo. PSC June 7, 2001) (finding VFX traffic "not be classified as a local call").

to which the code was assigned. *See id.* at 7.[42] Such a service would be valuable to customers that expect to receive a high volume of incoming calls from ILEC customers within the exchange of that NXX, because the CLEC's "Virtual NXX" arrangement allows such calls to be made without the imposition of a toll charge on the calling party. *Id.* at 7-8. In one common arrangement, a CLEC assigns an ISP that is collocated with its switch telephone numbers in every local calling area within a broad geographic area – a LATA, or an entire state, for example. The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish more than a single physical presence in that geographic area. *Id.* If the ISP had been assigned an NXX associated with the calling area in which it is actually located, many of those calls would be rated as toll calls. *Id.* at 8.

The decision of the FCC's Wireline Competition Bureau in the *Virginia Arbitration Order*[43] – in adopting language allowing the NPA-NXX of the called party to govern payment of reciprocal compensation – does not call our conclusion into question. The Bureau never addressed the basic question whether Virtual FX traffic is subject to reciprocal compensation under federal law. Instead, the Bureau simply suggested that, in the absence of a concrete proposal for distinguishing Virtual FX traffic from local traffic for billing purposes, the parties would not be compelled to give effect to that distinction,

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[42] *See also Adelphia Order* at 4.
[43] Memorandum Opinion and Order, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218 *et al.*, DA 02-1731 (Wireline Comp. Bur. rel. July 17, 2002) ("*Virginia Arbitration Order*") (Verizon App. Tab 8).

irrespective of the requirements of federal law. *Virginia Arbitration Order* ¶ 301. The Bureau's failure to respect the limitations on Verizon's reciprocal compensation obligations was both inconsistent with federal law and unsupported on the record, but in any event it has no application here, because, as discussed below, Verizon *has* presented evidence that carriers *can* accurately estimate the volume of FX and Virtual FX traffic exchanged between them. Thus, the *Virginia Arbitration* provides no basis for failing to implement the clear requirements of federal law in South Carolina.[44]

Even if federal law did not clearly resolve this question – which it does – the Commission adopts Verizon's proposal because it is consistent with sound regulatory policy. As US LEC's website describes, when a US LEC customer subscribes to a Virtual FX service, it pays an extra charge to US LEC in order to be able to receive calls originated in a distant exchange without a toll charge being imposed on the calling party. *See* US LEC's "Enhanced Local Services," at 2 (US LEC describing "Foreign exchange" as involving "an inbound-only call, toll-free to the calling party, which is paid for by the called party").[45] US LEC is thus paid by *its* subscriber precisely to ensure that Verizon

[44] The FCC recently released an order recognizing that when an interconnecting carrier implements an interconnection arrangement that makes calls by an incumbent's customers "appear local and involve no toll charges to callers in those areas" that the incumbent may assess appropriate charges on the interconnecting carrier. *See* Order on Review, *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, FCC 02-220, EB-00-MD-017, ¶ 5 (rel. July 25, 2002), *aff'g*, *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, DA 02-250, Memorandum Opinion and Order, 17 FCC Rcd 2091 (2002). The *Virginia Arbitration Order* was released before the *Mountain Communications* decision, and the Bureau's decision cannot be reconciled with that unanimous decision of the full Federal Communications Commission.

[45] Available at http://www.uslec.com/local_service.htm.

will *not* be paid any toll charges by *its* subscriber for an interexchange call. There is nothing necessarily wrong with that, so long as US LEC compensates Verizon appropriately for the service that Verizon continues to provide. But it would be deeply inconsistent with regulatory policy and basic fairness to require Verizon to *pay* US LEC, when Verizon continues to bear the same costs of originating the interexchange call, when Verizon is deprived of the toll charges that would ordinarily apply, and when US LEC is already receiving compensation from its customers. US LEC's proposal thus amounts to an extraordinarily clear example of attempted regulatory arbitrage – that is, a situation in which US LEC will earn revenues (both from its subscribers and from Verizon) while Verizon is forced to bear the bulk of the real costs of providing the service and is deprived of toll revenues to boot.

Under these circumstances, the only sensible result is that US LEC should compensate Verizon for the services that it continues to provide – *i.e.*, Verizon should continue to receive at least a portion of the toll charges that it would otherwise receive from its customer in the form of access charges paid by US LEC.[46] Indeed, there is no situation, and US LEC cites none, in which a carrier both charges its subscriber toll charges – as US LEC admits it does – and receives inter-carrier compensation. In every such circumstance, the inter-carrier compensation flows the other way, from the carrier who is receiving the toll charges to the carrier who is providing the access but receiving no revenue from its subscriber for the call.

[46] By the same token, if a US LEC customer originates a call to a Verizon FX customer, Verizon should pay intrastate access charges.

This is not only a matter of fairness between the parties, it is also fundamental to the structure of basic service rates, and the "decades-old public policy goal of assuring the widespread availability of affordable telephone service." Haynes Direct Testimony at 6. Traditionally, basic local exchange rates only entitle an end user to service *within the exchange*. *Id.* at 5. If the end user wishes to make a call outside the end user's local calling area, the end-user must generally pay a toll charge, which the LEC either keeps (if it is providing the interexchange service) or receives a part of in the form of access charges. *Id.* at 5-6. Some dialing arrangements – such as toll-free 800 numbers – allow the calling party to make an interexchange call without incurring the toll charges that would normally apply. *Id.* at 6. But the LEC continues to be compensated for providing access to the local exchange – in the case of 800 numbers, through access charges. Haynes Rebuttal Testimony at 11-12.

We find that federal law, sound policy, and basic fairness compel adoption of Verizon's proposed language. Whatever practical difficulties the parties may face in implementing that language would provide no basis for permitting the severe market distortions that adoption of US LEC's proposal could cause. But the record establishes that there need not be any significant problems with implementing Verizon's proposal, because a practical method for distinguishing FX and Virtual FX traffic from traffic that is subject to reciprocal compensation has already been proposed in other states and could inexpensively be implemented in South Carolina.

As Terry Haynes testified, it is a relatively straightforward matter to do a traffic study, based on an analysis of known FX and Virtual FX numbers, to determine the proportion of calls exchanged between the parties that are not subject to reciprocal compensation but that should be subject to access charges. *See* Haynes Surrebuttal Testimony at 5. That testimony made clear that performing such studies is "simple" and "not expensive." *Id.* In sum, the record establishes that there is no practical obstacle to implementing this Commission's established policy.

Accordingly, the Commission accepts Verizon's proposed language and rejects US LEC's proposed language. The Commission's decision is based upon the following for three reasons. First, US LEC's proposal is inconsistent with federal law, which explicitly provides that reciprocal compensation does not apply to interexchange traffic, as this Commission has recognized. Second, US LEC's proposal would create unacceptable regulatory arbitrage opportunities and discourage true local competition. Third, Verizon has explained that the parties can accurately and inexpensively distinguish FX and Virtual FX traffic from local traffic for inter-carrier compensation purposes.

5. ISSUE 7 – What compensation framework should govern the parties' exchange and termination of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's Internet Order is vacated or reversed on appeal? (Interconnection Attachment, Sections 8.1 and 8.1.1; General Terms and Conditions, Section 50.2).

US LEC's Position: In the event the interim compensation framework of the Internet Order ultimately is vacated or reversed on appeal, the parties should continue to compensate each other at the rates set forth in the FCC's Internet Order, but waive any other terms and conditions of that Order (*e.g.*, the growth caps and new market restrictions).

Verizon South's Position: The parties' obligations are governed by federal law.

Discussion:

Issue 7 addresses the question of what compensation arrangement should govern the parties' exchange and termination of ISP-bound traffic in the event the compensation framework in the FCC's *ISP Remand Order* is vacated or reversed on appeal. US LEC suggests that, in the event that portion of the *ISP Remand Order* is vacated or reversed on appeal, then the parties should continue to compensate each other at the rates set forth in the Order, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions). Verizon South, on the other hand, contends that if the compensation framework is vacated or reversed, then the parties should have to negotiate and, if necessary, arbitrate a new compensation framework.

As noted above, the D.C. Circuit has remanded the *ISP Remand Order*, but has expressly refused to vacate that order; as a result, the rules the FCC adopted remain in effect pending further FCC proceedings on remand. The FCC's *ISP Remand Order* sets forth a specific intercarrier compensation regime that governs the exchange of ISP-bound traffic between Verizon South and US LEC during the course of this arbitrated agreement. This issue arises to address possible solutions in case there is a subsequent change of law on this point during the term of the interconnection agreement.

Federal law does not obligate Verizon South, or entitle this Commission, to impose rules to address potential contingencies with respect to the meaning of federal law. Compensation for ISP-bound traffic, and all reciprocal compensation traffic, should be paid in conformance with federal law which governs the issue. This Commission finds that US LEC's proposed language has no basis in law. Therefore, this Commission rejects US LEC's position and finds that the parties' obligations should simply conform to those imposed by federal law. Any subsequent change of law on this point during the term of the interconnection agreement may be addressed pursuant to the change of law clause in the interconnection agreement. *See* US LEC Petition, Attach. B, at 3, General Terms and Conditions § 4.6.

6. ISSUE 8 – Should Verizon South be permitted to change its non-tariffed charges during the term of the agreement, or must such charges remain fixed for the entire term? (Pricing Attachment, Section 1.5).

US LEC's Position: Although tariffed charges may change during the term of the agreement due to changes in applicable tariffs, non-tariffed charges must remain fixed for the term of the agreement.

Verizon South's Position: Applicable tariff charges take precedence over charges set out in the agreement; regulatory decisions modifying applicable charges should be incorporated into the agreement.

Discussion:

The issue raised is whether Verizon South should be permitted to change its non-tariffed charges during the term of the agreement or whether such charges must remain fixed for the entire term. We adopt US LEC's position that although tariffed charges may change during the term of the agreement due to changes in applicable tariffs, non-tariffed charges—i.e., charges fixed in the agreement and not subject to any tariff—must remain fixed for the term of the agreement.

According to Section 1.5 of the proposed Pricing Attachment, Verizon South reserves the right to supercede *any* rates (i.e., both tariffed rates and non-tariffed rates) set forth in the parties' agreement with tariffed rates that are put in place *after* the parties have executed the agreement. Although Verizon South claims that it is not free to modify its tariffed rates generally because such changes take place only after they are submitted to the Commission before they are effectuated or emerge as a result of generic proceedings in which interested parties are able to participate in the review process (Verizon South Response at 32-33), we find Verizon South's justification unpersuasive. We find that Verizon South's position fails to recognize the considerable burden, both in terms of financial cost and in diversion of personnel whose resources would otherwise be devoted to more pressing matters, that is placed on CLECs to dispute a particular rate proposal. The entire process undermines the purpose of having a binding interconnection agreement that provides relative pricing certainty to the parties in the first instance. (Montano Direct at 32).[47]

This issue also was addressed in the recent FCC Arbitration before the Wireline Bureau. In that case, Verizon South's affiliate argued, as it does here, for the right to supercede any price by filing a subsequent tariff. WorldCom pointed out that, among other problems, permitting Verizon to supercede negotiated prices with subsequent tariffs shifts the burden of proof from Verizon (which has the burden of proving reasonableness of its rates in a negotiated interconnection agreement) to a CLEC (which must prove that a filed tariff should be rejected).[48] The Wireline Bureau "reject[ed] Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding. Thus, rates approved or allowed to go into effect by the

[47] We similarly reject Verizon South's "arbitrage" claims (*See* Verizon South Reponse at 33). Because US LEC has agreed to adhere to the non-tariffed rates specified in the agreement absent any changes in Applicable Law, we are not convinced by Verizon's contention that US LEC will seek to unfairly "exploit" those rates unless lower rates are generally available.

[48] *FCC Arbitration Order* at ¶ 592.

Virginia Commission would supercede rates arbitrated under the federal Act."[49] Instead, the FCC adopted WorldCom's language that would permit tariff revisions that "materially and adversely" affect the negotiated terms of the agreement to become effective only upon the parties' written consent or upon the affirmative order of the Virginia Commission.[50]

Here, US LEC submits that non-tariffed rates that the parties have negotiated, or that have been fixed by the Commission, should be fixed for the term of the agreement (with the exception of rates that must be modified due to changes in applicable law, which are addressed in other sections of the agreement). The Commission agrees with US LEC's position that Verizon South should not be permitted the unrestricted ability to modify rates through subsequent tariff filings that would supercede the nontariffed rates as contained in the interconnection agreement. US LEC's position recognizes that the parties will enjoy the "benefits of their bargain" for the term of the agreement except in those instances where changes in rates are required to be modified due to changes in applicable law. Therefore, we reject Verizon South's proposal, and adopt US LEC's proposal.

IV. CONCLUSION

The parties are directed to implement the Commission's resolution of the issues addressed in this Order by including language in the interconnection agreement which complies with the rulings and framework established and set forth herein.

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[49] *Id.* at ¶ 600.

[50] *Id.* at ¶ 590.

The Parties are directed to, and shall, file an agreement with the Commission, which contains the agreed upon language contained in Exhibit B to US LEC's Petition and which complies with the rulings and framework established in this Order, within sixty (60) days of receipt of this Order.

The Commission retains jurisdiction of this arbitration until the parties have submitted an interconnection agreement for approval by the Commission in accordance with Section 252(e) of the Act.

This Order is enforceable against US LEC and Verizon. US LEC affiliates are not bound by this Order. Similarly, Verizon affiliates which are not incumbent local exchange carriers are not bound by this Order. This Commission cannot enforce contractual terms upon a US LEC affiliate or Verizon affiliate which is not bound by the 1996 Act.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh

Gary E. Walsh, Executive Director
(SEAL)